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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/536,273	03/27/2000	Steven B. Smith	13660.6	3734
21999	7590	01/08/2008	EXAMINER	
KIRTON AND MCCONKIE 60 EAST SOUTH TEMPLE, SUITE 1800 SALT LAKE CITY, UT 84111			ADE, OGER GARCIA	
ART UNIT		PAPER NUMBER		
3627				
MAIL DATE		DELIVERY MODE		
01/08/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/536,273	<b>Applicant(s)</b> SMITH, STEVEN B.
	<b>Examiner</b> GARCIA ADE	<b>Art Unit</b> 3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

**Status**

1) Responsive to communication(s) filed on 17 October 2007.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 28-30 is/are pending in the application.

4a) Of the above claim(s)       is/are withdrawn from consideration.

5) Claim(s)       is/are allowed.

6) Claim(s) 28-30 is/are rejected.

7) Claim(s)       is/are objected to.

8) Claim(s)       are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on       is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No.      .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s).Mail Date      

4) Interview Summary (PTO-413)  
 Paper No(s).Mail Date      .

5) Notice of Informal Patent Application  
 6) Other:

**DETAILED ACTION**

***Response to Amendment***

1. The amendment filed on October 17<sup>th</sup>, 2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the cited references.
2. Claims 1-27 and 31-46 have been cancelled.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson [US 6,535,726], and further in view of Pare et al. [US 6,269,348].

**As per claims 28-30**, Johnson discloses a system for use in a wireless purchasing environment, wherein an electronic receipt is stored in a purchaser communications device [see figure 2A, read as ***fuel dispenser 220***], the system comprising: a credit card or debit card authorization processor [via IKD 130n and see figure 2A: ***block 140***]; configured to communicate directly with a vendor to receive requests for authorization and to transmit sales authorization to a vendor [see figure 1A, read as site ***communications interface 186*** for communicating with other on-site systems]; a vendor device for short range transmission to a

customer of information regarding inventory and pricing, vendor identification, sale amount requests and long range transmission of requests for authorization directly to the card authorization processor and reception of sales authorization on the same link [see figure 1A, read as an outside **communications interface 182** for communicating with the supporting cellular network 160]; a purchaser device utilizing an a short range communications to communicate with the vendor device [see column 8: lines 39-53], said purchaser communications device configured to transmit, receive and store: sales information, authorization validations and receipt information from the vendor device [see column 4: lines 11 – 19 (e.g. retail site **identification**), and see paragraph bridging columns 7 and 8 (e.g. **amount or a cost of the fuel dispensed**)].

Johnson discloses all the elements per claimed invention as mention above. Johnson does not explicitly disclose a biometric input device for user identification, which allows the purchaser to request authorization for a purchase. However, Pare discloses a biometric transaction system. Pare also discloses the authorization is transmitted to the vendor for the purchase of an item. It should also be noted Pare discloses a biometric input device [see abstract and summary of the invention].

Therefore, it would have been obvious to one of ordinary art at the time of the invention was made to modify Johnson to include Pare biometric transaction system. Such motivation to Johnson would have been to provide greater security against fraud for the purchaser.

***Response to Arguments***

5. Applicant's arguments filed on October 17<sup>th</sup>, 2207 have been fully considered but they are not persuasive.

Applicant argues that the Johnson reference does not disclose "both the request for authorization and the reception of sales authorization occur on the same link." The Examiner respectfully disagrees. Johnson discloses a transaction system that provides enhanced customer convenience and increased transaction security by sending transaction information to a cellular network provider via a customer's digital cellular phone. For example, a fuel dispenser is equipped with a communications link allowing direct communications to a customer's cellular phone. This information is used by the network to authorize a purchase transaction for the customer, such authorization information returned to the fueling station at which the fuel dispenser is located via the same link [see abstract].

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory

Art Unit: 3627

action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GARCIA ADE whose telephone number is (571)272-5586. The examiner can normally be reached on M-F 8:30AM - 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571.272.6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3627

Garcia Ade  
Examiner  
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ga

/Andrew Joseph Rudy/

Primary Examiner, Art Unit 3627